



City of Carmel

Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, May 23, 2005

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, May 23, 2005, in the Council Chambers of City Hall, Carmel, Indiana. The meeting was called to order at 6:15 PM with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins and Madeleine Torres, thereby establishing a quorum. Angie Conn, Jon Dobosiewicz, Nathan Anderson and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes of the April 25, 2005 meeting as submitted. The motion was seconded by Mrs. Torres and **APPROVED 3-0.**

Mrs. Plavchak joined the meeting at 6:20 PM.

H. Public Hearing.

1-3h. TABLED O'Malia Fireplace Shop Expansion

~~The applicant seeks the following development standards variances:~~

~~**Docket No. 04100017 V** Chapter 12.04.02 — front yard setback~~

~~**Docket No. 04100018 V** Chapter 27.03.02 — no curbed parking~~

~~**Docket No. 04110009 V** Chapter 26.04.05 buffer yard requirements~~

~~The site is located at 220 S Range Line Rd. The site is zoned B-1/Business.~~

~~Filed by Paul Reis of Drewry Simmons Pitts & Vornehm for the Helen J. O'Malia Trust.~~

4h. Martin Marietta Materials - Mueller Property North

Petitioner seeks special use approval to establish a sand/gravel extraction operation on 104± acres, with artificial lake reclamation.

Docket No. 05010021 SU ZO Chapter 5.02 special use in the S-1 zone

The site is located at the northwest corner of East 106th Street and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by Zeff Weiss of Ice Miller for Martin Marietta Materials, Inc.

Present for the Petitioner: Zeff Weiss, attorney for Martin Marietta Materials, Inc., 3400 One American Square, Indianapolis. Also present were John Tiberi, Regional Vice President Mid-America Region of Martin Marietta; Dan Hoskins, Regional Operations Service Manager and Wayne Phears, co-counsel from Atlanta, Georgia. This petition is for sand and gravel with a floating dredge operation on 105 acres between Gray Road on the west and Hazel Dell Parkway on the east just north of 106th Street and south

of the Kingswood neighborhood, as well as the Carmel Sand Plant operated by Martin Marietta. He gave a brief overview. They had met with the Kingswood Neighborhood Association Mining Task Force and got down to the basic issues. They appreciated the efforts of all involved. The outcome was staff recommendation for approval of the petition subject to a few items and support of the Kingswood Neighborhood Association and many of the adjoining property owners. There are detailed Statement of Commitments and Findings of Fact in the packets which the Board received. The Commitments are similar to the ones for Mueller South, except this operation is a floating dredge and it also contemplates some additional efforts on the part of Martin Marietta about the Carmel Sand Plant. The Carmel Sand Plant is not a part of this petition, but they have made some commitments to a process to relocate the plant to the east side of Hazel Dell Parkway. There was a hydrology study performed by the City's consultant Mr. Wittman and reviewed by Mr. John Duffy and his favorable comments were included. Also included was an appraisal/evaluation performed by Michael Lady for the land values, finding that mining activities do not have a detrimental effect on adjoining neighborhoods. There was an affidavit from Mr. Buss, a hydrologist, indicating positive things from his perspective.

Mr. Phears stated that the biggest issue with Mueller South was the plant noise. This application and the remand that they have asked for in the Circuit Court will enable them to resolve that. The Ordinance requires a 300-foot setback. In recent discussions some of the homeowners who live adjacent to the property would like a smaller setback from the lake, so that the 300-foot swath of property along the lake could not be developed in the future. Therefore, they may be back in the future for a variance. An area map was shown indicating each location for the mining and the plant relocation. The relocated plant site will be about 2300 feet from the nearest Kingswood house. At present it is about 800 feet from the nearest Kingswood house. More importantly, after it is moved, it will be pumping the material under Hazel Dell Parkway, reducing truck traffic. On the general mine plan layout, the berm will be 10-11 feet in height with a foot print of 30 to 50 feet in addition to the 300-foot setback. The berm specified along 106th Street is 6-7 feet. Operationally, all mining will be by dredge and pumped under Hazel Dell Parkway to the relocated plant site, minimizing the back-up alarms on trucks. There is a big stand of trees near the relocated plant site that will be preserved. The Commitments call for them to have the petition brought back that is in the Circuit Court. If that cannot be done, they will file a new application. They further committed to not do anything, even if Mueller North were approved, in terms of mining the property until the Board had at least one meeting to consider the relocated plant site. If Mueller North were approved tonight, they would have the remanded petition for relocation of the plant before the Board in June. If both of those were approved, they would still be taking material from Mueller South for the rest of this year. Then when they shut down for the winter, they would begin relocating the plant site to the east side and moving the dredge to the west side. When they reopened in the spring the plant would be gone in the back of Kingswood and the dredge will be there. They would not be mining Mueller North this year. They will be using the existing entrance. They have also agreed, at the urging of the neighbors, to mine Mueller North first, assuming the Board will release them from their Commitment on Mueller South and let them modify it. He also mentioned the studies that had been submitted. The hydrology study uses the phrase "minimal impact." The noise study shows no adverse impact because the dredge has a tiny noise footprint and with the buffer, noise above the 50 decibel range does not get out of buffer area. He highlighted some of the commitments. The operating hour's commitment has been negotiated and discussed with the neighbors. Their biggest concern was with load-out times because they generate the backup alarms. Operating the dredge is not going to be a noise issue, so the load-out times have been modified to 6:30 AM to 6:30 PM, which is less than the City's Mining Ordinance. There will be no blasting under this application. They are committed to relocate the plant under a very specific

commitment. They have committed not to import reserves so long as they have material available at the North Indy Carmel plant. As with the last application, if Mike Hollibaugh has any issues, he can order them to pay for additional studies. They had worked with the City very closely and the City's letter from the Utility Department reflects that they have provided all the information that was needed and a commitment has been made for modifying the monitoring plan to take account of the Mueller North operation. They have a right-of-way dedication along 106th Street that is required by the City. They are committed to buffers and screening. They have a spill prevention and control plan that has been reviewed by TAC and Mr. Wittman, the City's hydrologist. They have committed to use strobe lights and a reclamation plan and the attendant bonding.

Mr. Weiss addressed the statutory requirements. He stated that the property is zoned S-1 and mining is a permitted use and is physically suited to this use. This is a needed resource and continuation of a mining area. The property values remain stable. This use is compatible with the existing zoning, there is mining on both sides and more than adequate buffering being provided. They have been through the TAC process and utilities and services have been addressed. The City engaged Spectra Environmental to review the petition and all the mine maps and they found those to be acceptable. The effects upon vehicular traffic will not be adversely affected. They will use the existing infrastructure. The floating dredge process and piping under Hazel Dell Parkway is a big plus. They appreciated everyone's time. He distributed the ballot. If a vote is taken tonight, the Findings of Fact would be attached as Exhibit A and the Commitments that they will sign will be Exhibit B. If the Board is able to support this petition tonight, within ten days they will work with the staff to bring back a petition that was denied by the Board in 2002 for a remand or revote. That would allow them to relocate the plant next year, as was discussed. They have committed to do that in the Statement of Commitments and he believed it was supported by the adjoining property owners. They will also come back and ask for a modification of the Commitments in Mueller South to allow them to proceed with Mueller North first and then go to Mueller South. The reason is because they would get further from Kingswood sooner, rather than mining south and then coming closer to them. They have committed to do that and it is in the Board's control.

Public in Favor:

Russell Sveen, 11109 Woodbury Drive, Kingswood. He represented a committee of six persons who were delegated by the group of residents who reside directly adjacent to either Mueller North or the eastern boundary of Kingswood, next to Martin Marietta property. They were to work with Martin Marietta to seek a solution to Mueller North to provide adequately for their primary concerns. Those concerns were safety, security and reasonable privacy. They appreciated the efforts of Martin Marietta to meet with them and consider their views and concerns with the project. The discussions were positive and constructive. They support this petition to mine sand and gravel on the Mueller North property under the terms of the commitments that have been made by Martin Marietta and in accordance with their position as submitted previously and included in the Board's packets. They prefer the ruling on Mueller North not be made until the remand of the petition to move the processing plant can be considered at the same time. They continue to work with Martin Marietta and appreciate their forthright discussion and negotiations throughout the process. They will support them to the degree possible in securing a remand of the plant relocation and any other use variances that need to be remanded. They will also work with them in anticipation of supporting this variance regarding allowing the operation within less than 300 feet of their properties.

Bill McEvoy, 5120 Williams Circle, Chairman of the Kingswood Mining Committee. They have reached an agreement in principle with Martin Marietta on all the major issues and have recommended to the current Board that they approve this application. However, the current Board does need to vote on it before it becomes finalized. They would also like to see the remanding of the plant and the voting of this application to occur at the same time, because their support is predicated on the processing plant moving this winter.

Bernard Lally, 11087 Huntington Court in Kingswood since 1992. After numerous meetings and emails he felt they had made a gentleman's agreement on how things should be done. It has been difficult, but everyone found a way to compromise. At this point in time they should be able to move forward if these deals can be worked out at the same time.

Public in Opposition:
No one appeared.

Mr. Dobosiewicz gave the Department Report. The Department had made a written report advising the Board of the Findings of Fact and procedure for this item and the standards within the Ordinance. The recommendation in the report was favorable consideration. Consistent with the written request, they were asking that the Board continue action on this matter until the June 27 meeting in order to forward the Use Variance request, and possibly the Development Standards request with regard to the setbacks, back to the Board for consideration. After the public comments, it appeared to be a request, but he would leave that up to the Board as to whether they are comfortable with moving forward this evening.

Mr. Dierckman wanted to know the plans for the remaining property after the dredging and the status of dedicating that to the City.

Mr. Weiss stated there were two discussions going on about the property. The adjoining property owners have recently requested the 300-foot buffer be reduced to 150 feet, trying to narrow it down, so that it doesn't have practical use and they are supportive of that. The second part will take some work with the Mueller family to potentially grant a portion of the remaining 150 feet to each of the lot owners. They are committed to working on that process. If it were not to happen, they have provided in the commitments that the property could not be used for any commercial purpose and that does run with the land. There is the possibility of the land being conveyed to the City if the City wanted it. There is some support for that and Mr. Duffy indicated it would provide some additional protection for the City's wells. They are going to cooperate. There are no plans to develop this for any commercial use.

Mr. Dierckman questioned the language in the Commitments that work will not start here until the sand plant approval is granted.

Mr. Weiss stated they will not do anything until the plant relocation comes back to the Board for a hearing. The ultimate decision to relocate the plant is the Board's. If the approval is granted, then they will relocate the plant in the winter of 2005-06. That is in Commitment 1(g) on the first page.

Mr. Dierckman asked for a minute to read the section, because he might have a couple of follow-up questions.

Mr. Molitor drew the Board's attention to Commitment 8(d) which starts at the bottom of page six and states that "Any uses which interfere with or which are inconsistent with such natural undeveloped open space use (e.g., commercial or residential development) are expressly prohibited..." That is a commitment that would be made to this Board that there will be no commercial or residential development in the buffer area. That could be modified after a Public Hearing and approval by this Board, but that would be the standing commitment unless modified. There is also the final sentence in that paragraph that states that those "provisions...shall also be contained in any deed conveying an interest in the Real Estate as a deed restriction." If the real estate was conveyed to a new owner, whether the City of Carmel or a private party, those deed restrictions would have to be included in the deed. He also pointed out Section 1(g) which Mr. Dierckman was reading is part of the case which is now pending in Superior Court #2 and is one of the topics that will be discussed in the Executive Session after this meeting.

Mr. Dierckman appreciated the neighbors' concerns relative to the sand plant. On page 3, the fifth line starts "Martin Marietta agrees not to extract sand or gravel from Mueller North until such time as the BZA has had at least one meeting at which to consider either the remanded application, or a new application." He has a high degree of confidence that is the right thing to do and he thought they should have done it and some members might not have realized what they were voting on at the time. They wanted to move that plant. He felt they should change the language in the sentence to "such time as the BZA has approved the relocation of the Carmel Sand Plant."

Mr. Weiss stated that the problem was if Board turned down relocation of the plant for some reason. This application stands on its own. They want to move the plant and will bring that application back. They do not want to move the plant unless Mueller North is approved. But it says if Mueller North is approved they will bring back the plant and if it is approved then they will move the plant. So even if they come back next month, they would ask for the vote on Mueller North first, then the plant relocation. It says further down: "Martin Marietta further agrees if said Docket No. UV 23-02 which is the prior case is remanded and approved by the BZA, Martin Marietta shall relocate such plant during the winter of 2005-06 pursuant to the site plan and any related commitments so approved by the BZA." They want to bring back the remanded application or file a new one. They will do whatever it takes to move the plant. It is the Board's decision, not Martin Marietta's.

Mr. Dobosiewicz stated they are comfortable with the language in the Commitments because they do not want to unduly prejudice the Board's consideration of the remanded petition. If they tweak the language in 1(g), that may end up happening and he did not want to get the cart before the horse on considering the remanded petition.

Mr. Molitor stated "At the risk of being guilty of potential tweaking, I might recommend that instead of stating that in that sentence until such time as the BZA has had least one meeting at which to consider that it be restated to say that until such time as the BZA has duly considered either the remanded application or a new application and made a decision with respect to either of those." He did not feel it would take the BZA five or six months to do it, but it might take more than one.

Mr. Dierckman felt that was a good idea.

Mr. Weiss stated that if that makes a difference and will satisfy the Board, than they would accept it.

Mr. Dierckman felt that “at one meeting” doesn’t mean a whole lot.

Mr. Hawkins stated if that was acceptable, than that’s the way they would write it.

Mr. Dierckman wanted to ask Mr. McEvoy about this progress on the matter.

Mr. McEvoy stated they were linking the two together. Support for Mueller North is predicated on the plant moving. They would like them bundled together.

Mr. Dierckman felt there was a level of protection.

Mr. Molitor stated that if that tweak was made, the matter would still be entirely within the Board’s control and they could take the luxury of as many meetings as needed to duly consider that matter and make a decision.

Mr. Hawkins asked Mr. Weiss if they wanted a vote on the Mueller North Sand & Gravel operation prior to and as a separate docket than moving the plant.

Mr. Weiss stated that they are separate.

Mr. Hawkins asked that even if they remand it back to next month’s meeting, they are still going to request two dockets, and not going to join the two.

Mr. Weiss stated that they are two separate dockets and the Board would have to vote on them separately.

Mr. Dierckman thought with that language they could vote on this tonight. There seems to be enough measured protection in there. It is in this Board’s control on whether or not they want to agree to move the plant. He felt the last time there were so many parts and now this time they have taken them more mechanically one at a time. It’s been a good outcome.

Voices from the audience.

Mr. Hawkins reminded everyone that the Public Hearing portion of this is closed unless there is something that Mr. McEvoy forgot to follow up in answering Mr. Dierckman’s question.

Mr. Dierckman stated he would be happy to ask the question again.

Mr. McEvoy thought if they want to have two separate dockets that would be fine. They understood there was some confusion the first time around. He wanted a vote on both at the same meeting so that people realize there is a linkage. Is that a compromise?

Mr. Dierckman stated that they are not supposed to have a linkage between one approval and another approval. Each is a docket number in and of itself and is a case in and of itself. It’s a fine line that they were dealing with.

Mr. McEvoy stated that from their perspective it is a commitment so he did not know how to separate the two legally but they would feel more comfortable if the Board voted on it all at the same time so that all the information in front of the Board and the public.

Mr. Dierckman stated that with that tweak, he did not want to negotiate something with the homeowners. He understood they live there, but they were trying to prevent them from being able to do any work until the Board has given them the approval to move that plant and that should be protecting the homeowners.

Mr. McEvoy agreed.

Mr. Molitor stated that the tweak prevents them from actually commencing any mining on this property until the Board has had a chance to decide the question as to whether or not the plant may be relocated. The only impact of voting on one at this meeting and another at the next meeting would be with respect to the time within which someone might appeal the decision. Otherwise the two are linked by this commitment.

Mr. Hawkins asked if there was any reason for the Board to segregate the situation from a legal perspective.

Mr. Molitor did not think it mattered from a legal perspective.

Mr. Dierckman added that at the next meeting they would need to reopen it. He felt they have enough control and protection.

Mrs. Torres asked about the 150 feet between the mining site and the homeowners and the reclamation in the next fourteen years and its use.

Mr. Weiss confirmed that it is approximately 150 feet. The reclamation area will be a lake, but they do not know the end use. It will be an amenity, but the neighbors probably won't want boating activities because of the noise and commotion. Because of the City's wells, it may be more of a visual amenity.

Mr. Hawkins had more questions regarding the lake being dedicated to the City.

Mr. Weiss said that decision would be made later after some discussion with the City. The City may want to take it in a dedication form.

Mr. Hollibaugh had spoken with the Mayor and was authorized to speak on the Mayor's behalf. The City is interested in receiving the lake and the adjoining lands that are left either as a City Park or for a City well site. Mr. Duffy is very interested in that happening.

Mr. Weiss stated that is not a commitment because the property is owned by the Mueller family and Martin Marietta leases it. They have worked with the family on the restrictions, but the family will need to deal with the gifting.

Mr. Hawkins wanted the City to have first right of refusal.

Mrs. Torres asked how Martin Marietta could talk about reclamation of the land when they do not own it.

Mr. Weiss stated that they have a long-term lease on the property and have made a commitment to do that. The Mueller Development Company is joining in these commitments and making the same commitments. They are also posting a bond.

Mr. Dierckman wasn't sure what the Kingswood Homeowners' Association feelings were on the lake becoming a park. They would be most greatly impacted by this.

Mr. Hawkins felt they were in limbo with the setbacks and whether Kingswood homeowners on the southeast corner of the setbacks would be the owners of lake-front property. He would like to clear that up.

Mr. Weiss stated they had some additional things to discuss with Kingswood. They will be coming back with relocation of the plant and the sequencing. When they come back they should be in a better position to know what the neighbors want. They do not want a checkerboard with some owners taking an addition to their lot and others not wanting the setback added. They will also be talking with the City about the use or restricted use. The Board has given them not more than seven years to remove sand and gravel from Mueller South. The neighbors would like them to mine Mueller North first. They have committed to do that if Mueller South is modified. Once Mueller North is approved, they will file a petition to amend Mueller South to revise the five to seven year time frame and make that run after Mueller North is finished. That will be filed in one petition.

Mr. Hollibaugh stated that the City would like some decision on the ultimate reclamation and ownership. It is their intention that these get brought up with the petition to reduce the buffer or perhaps move the plant. They would like a decision made by the Mueller family and they will make that an issue when they review the future petitions.

Mr. Hawkins asked when the final disposition of this plant would expire. Would it be tied with the expiration of the sand and gravel at Mueller South or would it be indefinite?

Mr. Weiss stated that it would be indefinite. It operates presently and in the future for their operations in the area. They will not import to the plant, except with a few exceptions, while they are mining sand and gravel in Mueller North and Mueller South. The imported materials would be non-contiguous to the mines of Martin Marietta. That is stated in 1(h) on page 3.

Mr. Molitor pointed out the plant in Kokomo and masonry sand. He was not familiar with that operation, but assumed it was specialized type of material. He drew the Board's attention to the final sentence of that paragraph which states that this limitation expires when there are no more reserves on the Muller North and Mueller South sites. At that point they could begin importing materials again from other locations. He didn't know how many years that would be.

Mr. Weiss stated that a timeframe could be 20 years. He pointed out that the plant location was 2,341.3 feet away and there is a significant buffer that is going to stay and replace the piles in a way to attenuate the sound. The sound would have a long way to travel and should not be a problem. Just to relocate the plant is more than two million dollars. If it still makes sense to have it there, he thought

they would like the opportunity to import, as it is permitted where it sets. They are just moving the same operation and making it lawful.

Mr. Hawkins' main concern was not to make a long-term commitment for Carmel to be processing Noblesville or out-of-county sand and gravel indefinitely. He would like to see some sort of commitment to run with the operation of Mueller North and South. If nothing else, that it has to be re-approved at a certain point.

Mr. Weiss said he thought they would be working on that as part of the discussion when they remand the plant.

Mrs. Torres wanted to know why Mueller South was to be mined within seven years and Mueller North is eight to fourteen years.

Mr. Weiss stated that there were more resources.

Mr. Hawkins was very appreciative of what Kingswood and Martin Marietta had done, it had really simplified the process. He felt there were still a couple of outstanding issues and he was not inclined to vote at this time. He would leave that up to the Board.

Mr. Dierckman moved to approve **Docket No. 05010021 SU, Martin Marietta Materials - Mueller Property North** and all the Commitments with the modified language as referenced by John Molitor. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0.**

I. Old Business.

There was no Old Business.

J. New Business.

There was no New Business.

K. Adjourn.

Mr. Dierckman moved to adjourn. The motion was seconded by Mrs. Torres and **APPROVED 4-0.** The meeting was adjourned at 7:20 PM.

An Executive Session followed in the Conference Room of the Department of Community Services on the third floor to discuss pending litigation.

James R. Hawkins, President

Connie Tingley, Secretary